

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

**Revision of the Commission's Rules to  
Ensure Compatibility with Enhanced 911  
Emergency Calling Systems**

Supplement to Petition for Waiver

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CC Docket No. 94-102

To: The Wireless Telecommunications Bureau

**SUPPLEMENT TO PETITION FOR WAIVER**

Montana Wireless, Inc. ("MWI"), by its attorneys and pursuant to Sections 1.3, 1.65 and 1.925 of the Commission's Rules, hereby submits this Supplement to the Petition for Waiver it submitted September 28, 2001 and respectfully requests that the benchmarks contained therein be extended for an additional twelve months. In particular, vendor delays have forced MWI to revise the compliance schedule contained in its waiver Petition. MWI therefore requests that each of the benchmarks it requested in its September 28, 2001 Petition be extended for an additional twelve months.

**I. BACKGROUND**

MWI is a wholly owned subsidiary of Blackfoot Telephone Cooperative, Inc. ("Blackfoot"), a rural telephone cooperative that provides local exchange telephone and other telecommunications services in the Missoula, Montana area. MWI is licensee of Broadband PCS Station WPOI210 in the Broadband Personal Communications Service ("PCS"). Station WPOI210 is a license partitioned from the 30 MHz A-Block license for the Spokane-Billings

Major Trading Area ("MTA"). On November 1, 1996, the Commission approved MWI's application to partition the Missoula and Kalispell Basic Trading Areas ("BTAs") from the Spokane-Billings MTA and Powell County from the Butte BTA. MWI uses Nortel Network's ("Nortel") CDMA equipment for its PCS network.

MWI is committed to complying with Commission requirements regarding TTY, Automatic Location Identification ("ALI") and Communications Assistance for Law Enforcement Act ("CALEA"). However, in order to comply with these government mandates, MWI must upgrade its system. As the Commission is aware from MWI's previous filings in this docket, due to Nortel's discontinuation of its support of MWI's current dual-load wireless and wireline traffic switch, MWI must purchase a second switch and split the traffic from the existing switch. Before MWI can split the traffic, it must upgrade the system software to LWW007 (the equivalent of wireless MTX 9). Once the switch split is achieved, MWI must upgrade the system software a second time to wireless load MTX 10. Because of Nortel's decision to no longer support its dual mode switch, MWI has been put in the unusual circumstance of having to perform a technically complex switch split seamlessly. Nevertheless, MWI is committed to do this so as to comply with Commission E911 TTY and ALI and CALEA mandates.

Before MWI can proceed with the complex implementation task ahead of it, however, it must obtain the necessary software and hardware from its longtime vendor, Nortel. As MWI informed the Commission previously, it has had difficulty even obtaining a price quote from Nortel. Attached hereto is a copy of a letter dated June 10, 2002, from Nortel's Senior Sales Executive, Brian Meehan, to MWI parent company Blackfoot Telephone Cooperative's Dave

Martin. This letter explains and apologizes for the delay in providing Blackfoot with a price quote for the required technology. The letter does not, however, provide that price quote, but assures that one will be forthcoming in the near future. To date, Nortel has not provided the promised price quote.

## **II. GOOD CAUSE EXISTS TO EXTEND THE REQUESTED BENCHMARKS**

Good cause exists for the FCC to grant MWI's request for an extension of the benchmarks requested in its September 28, 2001 Petition for Waiver.<sup>1</sup> Good cause is shown and waiver of a rule is appropriate if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."<sup>2</sup> Similarly, under the Commission's rules governing Wireless Radio Services, the Commission may grant a waiver if, in view of unique or unusual factual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>3</sup> The Commission has consistently concluded that waiver of a regulatory deadline is appropriate when non-compliance "is due to circumstances beyond the licensee's control."<sup>4</sup> Moreover, the

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<sup>1</sup> The Commission may grant an extension or waiver of a compliance deadline for good cause shown. See 47 C.F.R. § 1.3.

<sup>2</sup> Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir 1969).

<sup>3</sup> See 47 C.F.R. § 1.925(b)(3).

<sup>4</sup> E.g., Order, *McElroy Electronics Corp.; Request for Clarification of Commission Rules Regarding Section 22.911(a) in Relation to Construction of Cellular System for Market No. 15-A2*, 13 FCC Rcd. 7291, 7295, ¶ 8 (WTB 1998).

Commission has specifically recognized that “technology-related issues” delaying implementation could warrant grant of a waiver to allow for their resolution.<sup>5</sup>

In MWI's case, special circumstances exist because MWI cannot proceed with its proposed Phase II implementation schedule until a new wireless-only switch is installed. However, Nortel has not even been able to provide MWI with a quote regarding the projected cost of the switch installation and split; therefore, MWI will not be able to implement and test the technology upgrades prior to the deadline. Without the new switch, MWI cannot activate E911 Phase II-compliant phones on the network because its current switch does not have the necessary technology. MWI has been diligent in requesting information from Nortel, but the strain of assisting its customers in complying with regulatory mandates has apparently exhausted Nortel's resources. Nortel assures MWI that a quote will be forthcoming and MWI will soon be able to move forward with its regulatory upgrades. Therefore, MWI is not requesting an open-ended extension, but instead intends to promptly achieve compliance within a reasonable period after the original deadline. Strict enforcement of the ALI compliance deadline in this instance would be inequitable and especially burdensome on a small carrier such as MWI, because it lacks the resources and market power that larger carriers can use to influence vendor delivery schedules and to participate in technology development and beta testing programs.

Finally, the underlying purpose of Section 20.18 would be frustrated by strict enforcement of the deadlines and benchmarks. Enforcing a strict deadline against MWI when the

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<sup>5</sup> See Fourth Memorandum Opinion and Order, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FCC 00-326, 15 FCC Rcd. 17442, 17459, ¶ 43 (2000) (“In the case of E911, we have recognized that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by October 1, 2001, and indicated that these cases could be dealt with through individual waivers as these implementation issues are more precisely identified.”).

necessary hardware and software upgrades for ALI capability on its network are not available to it would defeat the whole purpose of the rule; MWI requires the assistance and cooperation of its equipment vendor, Nortel, to achieve compliance. Such assistance and cooperation, while promised, has been slow in coming. MWI submits that application of the initial deadline for selling and activating handsets, as well as the initial benchmark requested in its Petition for Waiver, would be contrary to the public interest and unduly burdensome and respectfully requests an additional twelve months from the time requested in its Petition for Waiver to achieve each of the Enhanced 911 Phase II Automatic Location Identification handset-based service benchmarks.

MWI is requesting a twelve month extension of each requested benchmark because several steps must be taken before it will achieve compliance. Not only must it receive a quote from Nortel, but it must negotiate with Nortel an agreement to acquire the technology. Once the contract process is completed, MWI must upgrade its software in preparation for the installation of the second switch. MWI must also determine if it will require any modifications to its physical plant to accommodate the additional hardware, such as additional space or cooling capability. Once the new switch is installed, MWI must install a second software upgrade that will permit it to split the traffic from the single switch, and accomplish that split. MWI understands that it will take about ten weeks to complete each software upgrade. When the second upgrade is completed, MWI will be in a position to test and deploy the new technology.

MWI submits that it has no reasonable alternative than to wait for Nortel to provide it with a quote for the aforementioned switch splitting and software upgrades. MWI's system is completely based on Nortel infrastructure; any alternative ALI solution would require a complete

replacement of MWI's entire system. Such an action would be financially prohibitive and economically wasteful. MWI chose the dual switch to serve its rural market because it was more economical than a two-switch system. As a rural operator, MWI's license area is comparatively sparsely populated; it does not receive a return on its infrastructure development investment as rapidly as non-rural operators. Therefore, when constructing its system MWI chose a dual load switch, the most economical alternative. At the time MWI purchased the switch, it did not envision that Nortel would discontinue its support of the technology a few short years later.

In addition, MWI has asked the local Public Safety Answering Points ("PSAPs") about their Phase II readiness. The closest PSAP, located in Sanders County, has provided MWI with an estimate that it is about one year away from completing the necessary upgrades that would make its system Phase II capable and ready to begin testing. The remainder of the PSAPs in MWI's coverage area were unable to provide MWI with an estimate of when, if ever, they would be Phase II capable. Therefore, grant of the requested extension would prejudice no one as it will be at least another year before the technology can be effectively deployed.

As demonstrated above, MWI has met the Commission's standards for obtaining the requested waiver of Rule Section 20.18. While Section 20.18 of the Commission's Rules imposes ALI obligations only on Commission licensees (by reason of limitations on the Commission's statutory authority), the Commission has repeatedly acknowledged that achieving full regulatory compliance requires the cooperative efforts of carriers and equipment manufacturers and suppliers. As a service provider only, MWI would be unable to achieve

compliance with the Commission's ALI requirements without the availability of necessary equipment. MWI simply does not and will not have the equipment available to it to meet the original deadline, or the deadlines previously requested. As a small market carrier, MWI does not have the buying power of the national carriers and must wait for the equipment requirements of the larger carriers to be satisfied before Nortel will turn its attention to MWI's requirements and MWI will be able to upgrade its system to meet regulatory obligations.

The revised benchmarks would be as follows:

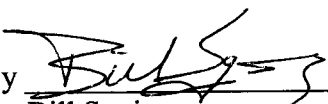
- July 1, 2003 - Begin selling and activating location capable handsets;
- By September 30, 2003 - Ensure that at least 25 percent of all new handsets activated are location-capable;
- By March 30, 2004 - Ensure that at least 50 percent of all new handsets activated are location capable;
- By September 30, 2004 - Ensure that all new handsets activated are location-capable;
- By September 30, 2007 - Achieve 95 percent penetration of location-capable handsets among MWI subscriber;
- By October 1, 2003 or within six months of receiving a PSAP request, whichever is later - Begin delivering E911 Phase II Service to the PSAP.

### III. CONCLUSION

It is clear that MWI has been diligent in pursuing compliance with the Commission's ALI requirements, but is unable to meet the requirements due to matters that are utterly beyond its ability to control. In view of the foregoing, MWI respectfully submits that the extension of the benchmarks requested herein is in the public interest and respectfully requests that it be granted.

Respectfully submitted,

**Montana Wireless, Inc.**

By   
Bill Squires  
Senior Vice President - General Counsel

Montana Wireless, Inc.  
1221 North Russell Street  
Missoula, Montana 59808-1805  
(406) 541-5000  
(406) 541-5099 (fax)

John A. Prendergast  
Kathleen A. Kaercher  
Blooston, Mordkofsky, Dickens,  
Duffy & Prendergast  
2120 L Street, NW Suite 300  
Washington, DC 20037

(202) 659-0830  
(202) 828-5568 (fax)

**Dated: June 28, 2002**





June 10, 2002

Mr. Dave Martin  
Blackfoot Telephone Cooperative  
1221 North Russell St  
Missoula, MT 59808

Dear Mr. Martin

Nortel Networks regrets the time it is taking to resolve the issue that prevents Blackfoot Telephone from meeting regulatory requirements such as CALEA, E-911 Phase II and E-911 TTY. As you are aware, the DMS-100W which provides both wire line and wire less services was manufacture discontinued in 2001.

While we have been discussing the need to split the existing switch into two separate switches, Nortel Networks has been slow in providing Blackfoot Telephone with a price quote. We now feel that we are close to correcting this issue. Nortel Networks is making this price quote a priority and we will provide you with a DMS-100 solution as soon as possible. Once accepted by Blackfoot Telephone, you will be able to meet the regulatory requirements stated above upon installation of the new DMS.

We apologize for the lengthy delay in assisting Blackfoot Telephone and your quest to be compliant with regulatory features.

Sincerely

Brian Meehan  
Senior Sales Executive  
Nortel Networks